80-851

NO.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

CLARENCE A. PRINGLE,

*Appellant ~~and Petitioner~~,*

V.

STATE OF TEXAS,

*Appellee and ~~Respondent~~.*

ON APPEAL FROM THE COUNTY COURT OF HALE COUNTY, TEXAS

~~and~~

~~PETITION FOR A WRIT OF CERTIORARI TO THE COUNTY COURT OF HALE COUNTY, TEXAS~~

## JURISDICTIONAL STATEMENT

MARVIN A. ROGERS
West Texas Legal Services
1601 Metro Tower
Lubbock, Texas 79401
(806) 763-4557

*Attorney for Appellant-~~Petitioner~~*

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## QUESTIONS PRESENTED

1. Whether the municipal ordinances as applied to appellant-petitioner are so vague on their face and in their application as to be violative of due process.
2. Whether the lower court violated due process by finding appellant-petitioner guilty and issuing a "cease and desist" order against him when the ordinance under which he was convicted allows for neither.
3. Whether the lower court violated due process by finding appellant-petitioner guilty of offenses with which he had not even been charged.
4. Whether appellant-petitioner was subjected to double jeopardy by being tried multiple times for each of two single offenses.

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## JURISDICTIONAL STATEMENT

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This appeal and petition for certiorari arises from the judgment entered by the County Court of Hale County, Texas on June 20, 1980, finding Clarence A. Pringle guilty of several municipal ordinance violations, sentence for which was pronounced on July 28, 1980, by said court. This statement is submitted to show that this Court has jurisdiction of the appeal, that substantial questions are presented, and that additional grounds exist for the issuance of a writ of certiorari.

## OPINIONS BELOW

The County Court of Hale County, Texas, did not issue an opinion in this case. The judgments of the County Court are set forth in Appendix C, *infra*; the sentences pronounced by said court are set forth in Appendix D, *infra*.

## JURISDICTION

Appellant-petitioner in this case was found guilty of several violations under municipal ordinances of the City of Hale Center, Texas.

The jurisdiction of the Texas Court of Criminal Appeals is governed in part by Article 4.03 of the Texas Code of Criminal Procedure (reprinted in Appendix H, *infra*), which specifies that there shall be no appeal to the Texas Court of Criminal Appeals when a case has already been appealed to the court of inferior jurisdiction and the final judgment is a fine of not more than $100. In the case at hand, the citations were appealed from the Municipal Court of Hale Center to the County Court of Hale County, Texas, under Article 45.10 of the Texas Code of Criminal Procedure (reprinted in Appendix I, *infra*). Since the fine for any single violation was not greater than $100, the judgment of the County Court of Hale County became the judgment of the court of last resort to the State of Texas in this particular matter. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. Sections 1257(2) and 1257(3).

## STATE STATUTES INVOLVED

The applicable statues involved in this appeal are Ordinance Nos. 220 and 291 of the Municipal Code of the City of Hale Center, Texas.

While the full text of the ordinances is set out in Appendices A-1 and A-2, *infra,* the basic provisions in question are as follows:

Ordinance No. 220

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HALE CENTER, TEXAS:

SECTION 1. That it shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the City of Hale Center, Texas, to permit or allow holes or places on said lots where water may accumulate and become stagnant, or permit same to remain.

SECTION 2. It shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the City of Hale Center, Texas to permit or allow the accumulation of stagnant water thereon, or to permit same to remain.

SECTION 3. It shall be unlawful for any person, firm or corporation who shall own or occupy any house, buildings, establishment, lot or yard in the City of Hale Center to permit or allow any carrion, filth or other impure or unwholesome matter to accumulate or remain thereon.

SECTION 4. It shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the City of Hale Center, Texas, to allow weeds, rubbish, brush or any other unsightly, objectionable or insanitary matter to accumulate or grow on said lot or lots.

SECTION 5. Should any owner of such lot or lots that have places thereon where stagnant water may accumulate and/or which are not properly drained, or the owner of any premises or building upon which carrion, filth or other impure or unwholesome matter may be fail and/or refuse to drain and/or fill the same lot or lots, or remove such filth, carrion or other impure or unwholesome matter, as the case may be, within ten days after notice to said owner to do so, in writing, or by letter addressed to such owner at his post office address or within ten days after notice of publication as many as two times within ten consecutive days in any newspaper in Texas, if personal service, may not be had as aforesaid, or if the owner's address be not known; then in that event, the City of Hale Center, Texas, may do such filling or draining, or removal of filth, carrion, etc., or any other unsightly, objectionable and charge the expenses incurred in doing such work or having such work done or improvements made to the owner of such lot or lots of real estate, and if such work is done or improvements made at the expense of the City of Hale Center, Texas, then such expense or expenses shall be assessed on the real estate, or lots upon which such expense was incurred.

SECTION 6. Should any owner of any lot or lots within the City of Hale Center, Texas, who shall allow weeds, rubbish, brush or any other unsightly, objectionable or insanitary matter to grow or accumulate thereon, fail and/or

refuse to cut down and/or remove such weeds, rubbish, brush or other unsightly, objectionable or insanitary matter, as the case may be, within ten days after notice to said owner to do so, in writing, or by letter addressed to such owner at his post office address, or within ten days after notice by publication as many as two times within ten consecutive days in any newspaper in Texas, may do so cutting down and/or removing such weeds, rubbish, brush or any other unsightly, objectionable or insanitary matter, or cause th same to be done and may pay therefore, and charge the expenses incurred in doing such work or having such work done or improvements made to the owner of such lot or lots or real estate; and, if such work is done or improvements made at the expense of the City of Hale Center, Texas, then such expenses shall be assessed on the real estate, or lot or lots upon which such expense was incurred.

Ordinance No. 291

Section 9: JUNKED VEHICLES DECLARED A PUBLIC NUISANCE.

Junked vehicles which are located in any place where they are visible from a public place or public right-of-way are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the State of Hale Center, by producing urban blight which is adverse to the maintenance and continuing development of the municipalities of Texas and Hale Center in particular, and such vehicles are therefore, declared to be a public nuisance in

Hale Center when located in any place in Hale Center where they are visible from a public space or public right-of-way.

Section 10: PROCEDURE FOR ABATING NUISANCES IN HALE CENTER.

In event Junked Vehicles are located in any place where they are visible from a public place or public right-of-way they may be removed by the Police Department of Hale Center according to the following procedure:

a. Private Property: The Police Department of Hale Center shall give 10 days notice to the owner or the occupant of the private premises whereupon such public nuisance exists stating the nature of the public nuisance on private property and that it must be removed and abated within 10 days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed by certified or registered mail with a 5-day return requested.

If the notice is returned undelivered by the United States Post Office official action to abate said nuisance shall be continued to a date not less than 10 days from the date of such return.

b. Public Property: The Police Department of Hale Center shall give not less than a ten (10) day notice, stating the nature of the public nuisance on public property or on a public right-of-way and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said 10 day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the public premises or to the owner or the occupant of the premises adjacent to the public right-of-way whereupon such public nuisance exists. If the notice is returned undelivered

by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

c. In event a motor vehicle has been removed under the above procedure it shall not be reconstructed or made operable.

d. A public hearing must be held prior to the removal of the vehicle of part thereof as a public nuisance before the City Council of Hale Center, Texas, when such hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, within 10 days after service of notice to abate the nuisance. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site.

e. AFTER REMOVAL: Within five (5) days after the date of removal notice must be given to the Texas Highway Department identifying the vehicle or part thereof; that it has been removed and give location from where removed and where the vehicle or part thereof is located.

f. EXCEPTION: Excepted from the provisions of this Ordinance are the following: [1] A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property.

[2] A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard.

[3] Unlicensed, operable or inoperable antique and special interest vehicles stored by a collector on his property, provided that the vehicles and the outdoor storage areas are

maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

g. ADMINISTRATION DELEGATED TO CHIEF OF POLICE OF HALE CENTER:

The procedure required by this ordinance shall be administered by the Chief of Police of the Police Department of Hale Center who is a regularly salaried, full time, employee of the City of Hale Center, Texas, and provided further that removal of vehicles or parts thereof from property may be made by the Chief of Police or any other person duly authorized by him.

## STATEMENT OF THE CASE

On three separate occasions in October 1979, Clarence A. Pringle was served by the Police Department of the City of Hale Center with a citation alleging that he had violated Ordinances Nos. 220 and 291 of the Hale Center Municipal Code (reprinted in full in Appendices A-1 and A2, *infra*).

On March 11, 1980, the Hale Center Police Department issued two citations to Mr. Pringle, one alleging a violation of Ordinance No. 220 and the other alleging a violation of Ordinance No. 291. Two citations with identical allegations were issued on March 12; two more on March 13; two more on March 14; and two more on March 17. At this point, including the three citations from the previous October, a total of thirteen (13) citations had been issued to Mr. Pringle.

Mr. Pringle exercised his right to appeal these citations from the Corporation Court of Hale Center to the County Court of Hale County for trial *de novo* pursuant to Article

45.10 of Texas Code of Criminal Procedure (reprinted in Appendix I, *infra*).

A bench trial on all ordinance violations was had on June 12, 1980. In judgments rendered on June 20, 1980 (reprinted in Appendix C, *infra*), Mr. Pringle was found guilty on a total of nine (9) citations. Sentence on each judgment was pronounced on July 28, 1980 (sentences reprinted in Appendix D, *infra*). Mr. Pringle was ordered to pay a $100.00 fine on each of nine violations of Ordinance No. 220 and ordered "to cease and desist the maintence [sic] of such conditions as may exist upon ten (10) days from the entry of this order to demonstrate compliance with this order" for each of nine violations of Ordinance No. 291. In addition, Mr. Pringle was ordered to pay prosecution and court costs for all violations of Ordiance No. 291.

A timely motion for new trial was filed on September 5, 1980, and was denied by operation of law on September 25, 1980. On the same day Mr. Pringle filed his notice of appeal to this Court.

## SUBSTANTIALITY OF QUESTIONS AND REASONS WHY WRIT SHOULD BE GRANTED

Clarence Pringle has operated a salvage yard on the outskirts of Hale Center, Texas since 1956. This salvage yard has been the source of livelihood, albeit often a meager one, for Mr. Pringle and his family. The City of Hale Center in October 1979 began an announced effort to put Mr. Pringle out of business by issuing him a series of citations under two municipal ordinances. Mr. Pringle was eventually convicted on nine of the citations, fined a total of $900, ordered to cease and desist certain activities, and charged with various court and prosecution costs.

Under the due process clause of the Fourteenth Amendment, an important liberty granted is the right of an individual to follow his chosen profession or occupation free from governmental interference. *Schware v. Board of Law Examiners,* 77 S. Ct. 752 (1957); *Greene v. McElroy,* 79 S. Ct. 1400 (1959). The State of Texas, by its actions in this case, has encroached on Mr. Pringle's liberty to practice his occupation in several important respects, including the following: 1) one ordinance under which Mr. Pringle was convicted and fined is so overbroad as written and so vague in its application in this case that it was not possible for Mr. Pringle to have advance notice of what conduct was prohibited; 2) the other ordinance under which Mr. Pringle was convicted and assessed court and prosecution costs contains only a procedure for abating so-called "nuisances" and provides not basis for finding a person guilty or charging him with costs; 3) on six of the nine citations for which Mr. Pringle was tried, he was found guilty of violating ordinances for which he had not even been cited; and 4) Mr. Pringle was convicted nine different times for alleged violations which constituted a single transaction.

The decisions of this Court interpreting the U.S. Constitution are intended to apply to all inferior courts in the land. At the same time, it is obvious that the Court does not have the resources to police every constitutional injustice that inferior courts may engage in. The Court thus limits itself to intervention in such cases where there is a compelling reason to do so. It is urged that what makes this case a compelling one is the wholesale failure to follow due process in the County Court of Hale County, Texas. The sheer concentration of wrongs here—which place Mr. Pringle in serious danger of not being able to carry on his occupation—are what require the Court's intervention.

It is well established that, particularly in the area of criminal law, notice of what conduct is prohibited and notice of what alleged violations an individual is to be tried for are at the heart of the protections of the due process clause of the Fourteenth Amendment. *Board of Regents of State Colleges v. Roth,* 92 S. Ct. 2701 (1972); *Boddie v. Connecticut,* 91 S. Ct. 780 (1971); *Aetna Ins. Co. v. Hartshorn,* 477 F.2d 97 (5th Cir. 1973). As the following discussion shows, Mr. Pringle was denied these protections several times over.

1. **Ordinance No. 220, as applied to Mr. Pringle, is constitutionally vague.** Ordinance No. 220, under which Mr. Pringle was convicted nine times and fined a total of $900.00, makes it unlawful for any to allow "unsightly, objectionable, or insanitary matter" to accumulate on his property.

Undoubtedly the City of Hale Center has the power through a properly-drawn ordinance to protect the health, safety, morals, and welfare of its residents, but Ordinance No. 220 is not such an ordinance. The terms "unsightly" and "objectionable" are not terms evincing an interest in health and safety but rather refer to aesthetic considerations long established not to be legitimately within the state's police power. *See* Freund, *The Use of Indefinite Terms in Statutes,* 30 Yale L.J. 437 (1921). Certainly the great bulk of the testimony at trial went to the lack of aesthetic appeal of the scrap metal on Mr. Pringle's property and the resultant effect on neighboring property values, and, though there are several sections to Ordinance No. 220, he was specifically found guilty of the offensive section. Each judgment (reprinted in Appendix C, *infra*) found that he "did unlawfully allow rubbish, trash, and other unsightly, objectionable, and unsanitary matter, specifically junked vehicle bodies, scrap

iron, empty petroleum drums, and other items of scrap metal to accumulate" on his property.

Because of the subjective element involved in defining "unsightly" and "objectionable", it was not possible for Mr. Pringle to have the advance notice required by due process of what conduct was prohibited. *Grayned v. City of Rockford,* 408 U.S. 104 (1972); *Zwickler v. Koota,* 389 U.S. 241 (1967); *Geiger v. City of Eagan,* 618 F.2d 26 (8th Cir. 1980).

There is not case law or state statutory mandate which attempts to limit the construction of the offending language. The Ordinance in Sections 5 and 6 does provide (reprinted in Appendix A-1, *infra*) for notice to be given in writing of the violation of the ordinance and giving the violator ten days to correct the situation. If such specific notice were given, this would perhaps remedy the vagueness of the enforcement pattern of the ordinance. However, in this case, the uncontroverted testimony of the Police Chief of Hale Center, who personally issued all the citations in question, shows clearly that the written notification procedure of the ordinance was not followed (see Appendix G, *infra*).

2. **Ordinance No. 291 lacks any provision for criminal prosecution.** As noted *supra,* the very essence of due process requires notice of the charges against one and an opportunity to be heard in defense against those charges. The provisions of Ordinance No. 291 (reprinted in Appendix A-2, *infra*) applied to Mr. Pringle establish procedures for identifying junked vehicles alleged to be public nuisances and for abating those nuisances after an opportunity is given the alleged violator to request a hearing before the City Council. Nowhere does the ordinance describe the power to undertake a criminal prosecution

against an alleged violator; yet in the instant case Mr. Pringle was tried criminally, was found guilty, was made the subject of a "cease and desist" order, and was assessed all prosecution and court costs in the cases in which he was convicted. Since the ordinance in question calls for none of this, it can hardly be said that Mr. Pringle could have had notice that he was subject to criminal prosecution for a violation of Ordinance No. 291.

Additionally, the "cease and desist" order specified that he is "to cease and desist the maintence [sic] of such conditions as may exist upon ten (10) days from the entry of this order to demonstrate compliance with this order." It is respectfully urged that this language is so vague that there is no way for Mr. Pringle to know even at this point what he has done to contravene the ordinace and what conduct he is to abstain from in the future if he wishes to avoid further prosecution.

3. **Mr. Pringle was found guilty of ordinance violations for which he was not even charged.** On June 20, 1980, Mr. Pringle was adjudged guilty on nine of the citations issued to him (judgments reprinted in Appendix C, *infra*). On three of the citations, issued in October 1979, Mr. Pringle was charged with violating both Ordinance No. 220 and Ordinance No. 291 (all citations reprinted in Appendix B, *infra*). Of the remaining six citations, all issued in March 1980, three charged Mr. Pringle with violating Ordinance No. 220, and three charged him with violating Ordinance No. 291. Yet, as the judgments show, Mr. Pringle was found guilty in each case of violating both Ordinance No. 220 and Ordinance No. 291. As a result, in six of the nine cases in which he was cited that led to conviction, Mr. Pringle was convicted of an offense with which he was not charged. If, as

already noted more than once *supra,* notice of charges and an opportunity to be heard is the essence of due process, there was no way for Mr. Pringle to defend himself when his first knowledge that he was being prosecuted for certain charges came when he was found guilty of those charges.

4. **Mr. Pringle was subjected to double jeopardy by being tried multiple times for the same transaction.** The due process clause of the Fourteenth Amendment secures to defendants the prohibition against double jeopardy embodied in the Fifth Amendment. Double jeopardy occurs when a defendant is subjected to multiple prosecutions or multiple punishments for the same offense. *Brown v. Ohio,* 97 S. Ct. 2221 (1977); *Blockburger v. U.S.,* 52 S. Ct. 180 (1932). The key test in determining double jeopardy, as stated in *Blockburger* and reiterated in *Brown,* is whether, in mumtiple prosecutions, each prosecution requires proof of an additional fact which the other prosecutions do not.

In the case at hand, the nine citations under which Mr. Pringle was convicted included six separate citations under Ordinance No. 220 and six separate citations under Ordinance No. 291. At the trial on these citations the prosecution put on evidence to show violation of the ordinances without making any effort to show the precise date each piece of testimony or evidence was intended to refer to a particular date. Thus the prosecution effort was aimed at trying to establish a single violation of each ordinance without regard to the precise time of any individual violations.

We would respectfully urge that, setting aside the points already raised as to why a prosecution will not lie under either of the ordinances described, the multiple prosecutions undertaken against Mr. Pringle cannot be justified. As this

Court stated in *Brown, supra*, "The Double Jeopardy Clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spatial units." 92 S. Ct. at 2227.

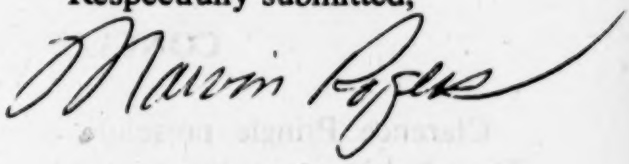
## CONCLUSION

Clarence Pringle presently faces a fine of $900.00. Though the amount has not yet been specified, Mr. Pringle has been ordered to pay various prosecution and court costs which could amount to this much again. Mr. Pringle is not a man of large means and may well be forced to close down his buisness as a result of these penalties. Even if he is able to continue operations, it is still not clear what conduct is prohibited, and the same procedures as were followed in the cases described here could lead to further livelihood-destroying penalties.

The penalties would not be nearly so great, and certainly would not warrant this Court's attention, but for the fact that Mr. Pringle was found guilty of violating ordinances under which he was not charged, was found guilty of violating ordinances which do not call for criminal prosecution, and, finally, was found guilty nine times on what could have been at most a single violation of each ordinance in question.

These wholesale deprivations of constitutional due process, doing perhaps terminal damage to Mr. Pringle's right to conduct a perfectly legal business, are the reasons that the Court should take jurisdiction of this appeal.

Respectfully submitted,



MARVIN A. ROGERS
West Texas Legal Services
1601 Metro Tower
Lubbock, Texas 79401
(806) 763-4557
*Attorney for Appellant-Petitioner*

## CERTIFICATE OF SERVICE

I, MARVIN A. ROGERS, Attorney for Appellant-Petitioner, do hereby certify that I mailed three (3) true and correct copies of the foregoing Jurisdictional Statement and Petition for Writ of Certiorari, with first class postage prepaid, to:

Mr. Ron Felty
Attorney for Appellee-Respondent,
County Attorney
Hale County Courthouse
Plainview, Texas 79072

Hon. Mark White
Attorney General
State Capitol
Austin, Texas 78711

on this _____ day of _____, 1980.

_____
MARVIN A. ROGERS

# APPENDIX

## APPENDIX A-1

### ORDINANCE NO. 220

AN ORDINANCE TO PROTECT THE PUBLIC HEALTH AND PROMOTE THE PUBLIC WELFARE OF THE CITY OF HALE CENTER, TEXAS, BY PROVIDING FOR THE FILLING UP AND DRAINAGE OF LOTS THAT SHALL HAVE UNWHOLESOME PLACE OR PLACES WHERE STAGNANT WATER MAY ACCUMULATE THEREON: THE CLEANING OF ANY BUILDING OR PREMISES OF FILTH, CARRION OR OTHER IMPURE AND UNWHOLESOME MATTER: REQUIRING OWNERS OR OCCUPANTS OR LOTS IN THE CITY OF HALE CENTER TO KEEP SAID LOTS FREE FROM WEEDS, RUBBISH, BRUSH AND OTHER UNSIGHTLY OR INSANITARY MATTER: PROVIDING FOR NOTICE TO BE GIVEN TO OWNERS OR PREMISES IN CASE OR FAILURE OF OWNER TO MAKE LOTS AND/OR PREMISES SANITARY AND SIGHTLY THAT THE SAME MAY BE DONE AT THE EXPENSE OF THE CITY OF HALE CENTER: PROVIDING FOR THE FIXING OF A LIEN AGAINST SUCH LOTS FOR SUCH IMPROVEMENTS: AND DECLARING AN EMERGENCY. PROVIDING FOR PARTIAL INVALIDITY: ESTABLISHING AN EFFECTIVE DATE: AND AUTHORIZING PUBLICATION BY CAPTION ONLY.

WHEREAS, it is deemed by the City Council of the City of Hale Center, Texas, that it is so dangerous to the public

health for lots is the City of Hale Center to have places thereon where stagnant water may accumulate and for filth, carrion or other impure and unwholesome matter to accumulate on lots in said city and that it is dangerous to public health and constitutes a fire hazard to have weeds, brush, rubbish, and other unsightly and insanitary matter on lots in the city of Hale Center; and

WHEREAS, it is expressly provided by the provisions of Article 4436, Revised Civil Statutes of Texas, that cities shall have the power to correct the evils hereinbefore recited.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HALE CENTER, TEXAS:

SECTION 1. That it shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the City of Hale Center, Texas, to permit or allow holes or places on said lots where water may accumulate and become stagnant, or permit same to remain.

SECTION 2. It shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the City of Hale Center, Texas to permit or allow the accumulation of stagnant water thereon, or to permit same to remain.

SECTION 3. It shall be unlawful for any person, firm or corporation who shall own or occupy any house, buildings, establishment, lot or yard in the City of Hale Center to permit or allow any carrion, filth or other impure or unwholesome matter to accumulate or remain thereon.

SECTION 4. It shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the City of Hale Center, Texas, to allow weeds, rubbish, brush or any other unsightly, objectionable or insanitary matter to accumulate or grow on said lot or lots.

SECTION 5. Should any owner of such lot or lots that have places thereon where stagnant water may accumulate and/or which are not properly drained, or the owner of any premises or building upon which carrion, filth or other impure or unwholesome matter may be fail and/or refuse to drain and/or fill the same lot or lots, or remove such filth, carrion or other impure or unwholesome matter, as the case may be, within ten days after notice to said owner to do so, in writing, or by letter addressed to such owner at his post office address or within ten days after notice by publication as many as two times within ten consecutive days in any newspaper in Texas, if personal service, may not be had as aforesaid, or if the owner's address be not known; then in that event, the City of Hale Center, Texas, may do such filling or draining, or removal of filth, carrion, etc., or any other unsightly, objectionable or insanitary matter, or cause the same to be done and may pay therefore and charge the expenses incurred in doing such work or having such work done or improvements made to the owner of such lot or lots or real estate, and if such work is done or improvements made at the expense of the City of Hale Center, Texas, then such expense or expenses shall be assessed on the real estate, or lots upon which such expense was incurred.

SECTION 6. Should any owner of any lot or lots within the City of Hale Center, Texas, who shall allow weeds, rubbish, brush or any other unsightly, objectionable or

insanitary matter to grow or accumulate thereon, fail and/or refuse to cut down and/or remove such weeds, rubbish, brush or other unsightly, objectionable or insanitary matter, as the case may be, within ten days after notice to said owner to do so, in writing, or by letter addressed to such owner at his post office address, or within ten days after notice by publication as many as two times within ten consecutive days in any newspaper in Texas, may do so cutting down and/or removing such weeds, rubbish, brush or any other unsightly, objectionable or insanitary matter, or cause the same to be done and may pay therefore, and charge the expenses incurred in doing such work or having such work done or improvements made to the owner of such lot or lots or real estate; and, if such work is done or improvements made at the expense of the City of Hale Center, Texas, then such expenses shall be assessed on the real estate, or lot or lots upon which such expense was incurred.

SECTION 7. The Mayor or City Health Officer of the City of Hale Center shall file a statement of such expenses incurred under Section 5 or under Section 6 of this ordinance, as the case may be, giving the amount of such expenses, the date on which said work was done or improvements made, with the County Clerk of Hale County, Texas: and the City of Hale Center, Texas, shall have a privileged lien on such lot or lots or real estate upon which said work was done or improvements made to secure the expenditures so made, in accordance with the provisions of said Article 4436, Revised Civil Statutes of Texas, which said lien shall be second only to tax liens and liens for street improvements; and said amount shall bear ten per cent interest from the date said statement was filed. It is further provided that for any such expenditures, and interest, as

aforesaid, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the City of Hale Center, Texas; and the statement of expenses so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

SECTION 8. Any person, firm or individual who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding Two Hundred Dollars ($200), and each and every day's violation shall constitute a separate and distinct offense, in case the owner of occupant of any lot, lots or premises under the provisions of this ordinance shall be a corporation, and shall violate any provision of this ordinance, the president, vice president, secretary, treasurer of such corporation, or any manager, agent or employee of such corporation shall be also severally liable for the penalties herein provided.

SECTION 9. That if any part of this ordinance is, or should be held invalid for any reason, then that fact shall not invalidate the entire ordinance, but the balance thereof shall remain in full force and effect.

SECTION 10. All other ordinances or parts or ordinances in conflict with this ordinance are hereby repealed, and in particular Ordinance No. 158 adopted by the City Council on April 5, 1965, is expressly repealed by this ordinance.

SECTION 11: This ordinance shall take effect from and after its publication as provided by law.

SECTION 12: The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption hereof together with the penalty provisions as authorized by Article 1176(b), Vernon's Annotated Texas Statutes.

## APPENDIX A-2

### ORDINANCE NO. 291

ABANDONED and/or JUNKED MOTOR VEHICLE REMOVAL AUTHORITY & PROCEDURE

AN ORDINANCE DEFINING ABANDONED and/or JUNKED MOTOR VEHICLES; GRANTING AUTHORITY TO ABATE, REMOVE AND DISPOSE OF SAME AND ADOPTING PROCEDURE FOR THE ABATEMENT & REMOVAL OF ABANDONED and/or JUNKED MOTOR VEHICLES OR PARTS THEREOF AS PUBLIC NUISANCES FROM PRIVATE PROPERTY OR PUBLIC PROPERTY OR PUBLIC RIGHT OF WAY.

BE IT ORDAINED BY THE CITY COUNCIL OF HALE CENTER, TEXAS:

Section 1: SHORT TITLE: This ordinance shall be cited as the "Hale Center Junked Motor Vehicle Ordinance"

Section 2: DEFINITIONS: As used in this ordinance:

a. "Police Department" means the Police Department of Hale Center, Texas.

b. "Abandoned Motor Vehicle" means a motor vehicle that is inoperable and over eight years old and is left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that

has remained on private property without the consent of the owner or person in control of the property for more than 48 hhours, or a motor vehicle left unattended on the rights-of-way of any designated street or alley in Hale Center or any county, state or federal highway within the City of Hale Center in excess of 48 hours.

c. "Demolisher" means any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.

d. "Garagekeeper" shall mean any owner or operator of a parking place or establishment, motor vehicle storage facility, or any establishment for the servicing, repair, or maintenance of motor vehicles.

e. "Junked vehicle" means any motor vehicle which is inoperative and which does not have lawfully affixed thereto both an unexpired license plate or plates and a valid motor vehicle safety inspection certificate and which is wrecked; dismantled; partially dismantled; or discarded. [Reference Art 6701-d Sec. 11 & Art. 6687-1 Sec. 37 VACS].

f. "Storage Facility" means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

g. "Motor Vehicle" means any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.

h. "Antique auto" means passenger cars or trucks that were manufactured in 1925 or before, or which become 35 or more years old.

i. "Special interest vehicle" means a motor vehicle of any age which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

j. "Collector" means the owner of one or more antique or special interest vehicles who collects, purchases, acquires,

trades, or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Section 3: AUTHORITY TO TAKE POSSESSION OF ABANDONED MOTOR VEHICLES. The police department may take into custody any abandoned motor vehicle found on public or private property. In such connection the police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving, and storing abandoned motor vehicles.

Section 4: NOTIFICATION OF OWNER AND LIEN HOLDERS.

A. When the police department takes into custody an abandoned motor vehicle it shall notify within 10 days thereof, by registered or certified mail, return receipt requested, the last known registered owner of the motor vehicle and all lien holders of record pursuant to the Certificate of Title Act, as amended [Article 6687-1 VACS] that the vehicle has been taken into custody. The notice shall describe the year, make, model, and vehicle registration and identification numbers of the abandoned motor vehicle; set forth the location of the facility where the motor vehicle is being held; inform the owner and any lien holders of their right to reclaim the motor vehicle within 20 days after the date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody, or garagekeepers charges if notice is pursuant to the provisions of Section 6 of this ordinance dealing with

garagekeepers and abandoned vehicles. Further, the said notice shall state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lien holders of all right, title, and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

B. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identify and addresses of all lien holders, notice by one publication in one newspaper or general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this ordinance. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by registered or certified mail and shall have the same contents required for a notice by registered or certified mail.

C. The consequences and effect of failure to reclaim an abandoned motor vehicle shall be as set forth in a valid notice given pursuant to this section.

Section 5: AUCTION OF ABANDONED MOTOR VEHICLES. If an abandoned motor vehicle has not been reclaimed as provided for in Section 4 of this Ordinance, the police department shall sell the abandoned motor vehicle at a public auction. Proper notice of the public auction shall be given, and in the case of a garagekeepers lien, the garage-keepeer shall be notified of the time and place of such action. The purchaser of the motor vehicle shall take title to the motor vehicle free and/clear of all liens and claims of ownership, shall receive a sales receipt from the police

department and shall be entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle the police department shall reimburse itself and the City of Hale Center for the expenses of the auction, the costs of towing, preserving, and storing the vehicle which resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred pursuant to Section 4 of this ordinance. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for 90 days, and then shall be deposited in a special fund which shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs which result from placing other abandoned vehicles in custody, whenever the proceeds from a sale of such other abandoned motor vehicles are insufficient to meet these expenses and costs.

Section 6. GARAGEKEEPERS AND ABANDONED MOTOR VEHICLES.

Any motor vehicle left for more than 10 days in a storage facility operated for commercial purposes after notice by registered or certified mail, return receipt requested, to the owner to pick up the vehicle [if such notice is returned by the post office unclaimed, notice by one publication in one newspaper of general circulation in the area where the vehicle was left in such storage facility shall constitute notification], or for more than 10 days after the period when, pursuant to contract, the vehicle was to remain on the premises of such storage facility, and any motor vehicle left for more than 10 days in such storage facility by someone other than the registered owner or left by a person authorized

to have possession of the motor vehicle under a contract of use, service, storage, or repair, shall be deemed an abandoned vehicle, and shall be reported by the garagekeeper to the police department. Any garagekeeper who fails to report the possession of such a vehicle within 10 days afte it becames abandoned within the meaning of this section shall no longer have any claim for storage of the vehicle. The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle deemed abandoned under the provisions of this section shall follow the notification procedures set forth in Section 4 of this ordinance, except that custody of the vehicle shall remain with the garagekeeper until after the notification requirements have been complied with. A fee of $2.00 shall accompany the report of the garagekeeper to the police department. The $2.00 fee shall be retained by the police department receiving the report and used to defray the cost of notification or other cost incurred in the disposition of abandoned motor vehicles. All abandoned vehicles left in storage facilities which are not reclaimed after such notice in accordance with procedures set forth in Section 4 of this ordinance shall be taken into custody by the police department and sold in accordance with the procedure set forth in Section 5 of this ordinance. The proceeds of a sale under the provisions of this Section shall first be applied to the garagekeeper's charges for servicing, storage and repair; provided, however, that as compensation for the expense incurred by the police department in placing the vehicle in custody and the expense of auction the police department shall retain an amount of two percent of the gross proceeds of the sale of each vehicle auctioned, but in case such percent of the gross proceeds shall be less than $10, the department shall retain the sum of $10 to defray expenses of custody and auction. Any surplus

proceeds remaining from such auction shall be distributed in accordance with Section 5 of this ordinance. Except for the termination of claim for storage for failure to report an abandoned motor vehicle, nothing in this section shall be construed to impair any lien of a garagekeeper under the laws of this State.

Section 7: DISPOSAL TO DEMOLISHERS. Any person, firm, corporation or unit of government upon whose property or in whose possession is found any abandoned Motor Vehicle or any person being the owner of a Motor Vehicle whose title certificate is faulty, lost, or destroyed is referred to Art. 6687-1 & 6687-2 VACS.

Section 8: DUTIES OF DEMOLISHERS. Demolishers are referred to Article 6687-1 and 6687-2 Vernon's Annotated Civil Statutes for an explanation of their duties.

Section 9: JUNKED VEHICLES DECLARED A PUBLIC NUISANCE.

Junked vehicles which are located in any place where they are visible from a public place or public right-of-way are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the State and Hale Center, by producing urban blight which is adverse to the maintenance and continuing development of the municipalities of Texas and Hale Center in particular, and such vehicles are therefore, declared to be a public nuisance in Hale Center when located in any place in Hale Center where they are visible from a public place or public right-of-way.

## Section 10: PROCEDURE FOR ABATING NUISANCES IN HALE CENTER.

In event Junked Vehicles are located in any place where they are visible from a public place or public right-of-way they may be removed by the Police Department of Hale Center according to the following procedure:

a. Private Property: The Police Department of Hale Center shall give 10 days notice to the owner or the occupant of the private premises whereupon such public nuisance exists stating the nature of the public nuisance on private property and that it must be removed and abated within 10 days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed by certified or registered mail with a 5-day return requested.

If the notice is returned undelivered by the United States Post Office official action to abate said nuisance shall be continued to a date not less than 10 days from the date of such return.

b. Public Property: The Police Department of Hale Center shall give not less than a ten (10) day notice, stating the nature of the public nuisance on public property or on a public right-of-way and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said 10 day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the owner or the occupant of the public premises or to the owner or the occupant of the premises adjacent to the public right-of-way whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

c. In event a motor vehicle has been removed under the above procedure it shall not be reconstructed or made operable.

d. A public hearing must be held prior to the removal of the vehicle of part thereof as a public nuisance before the City Council of Hale Center, Texas, when such hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, within 10 days after service of notice to abate the nuisance. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site.

e. AFTER REMOVAL: Within five (5) days after the date of removal notice must be given to the Texas Highway Department identifying the vehicle or part thereof; that it has been removed and give location from where removed and where the vehicle or part thereof is located.

f. EXCEPTION: Excepted from the provisions of this Ordinance are the following: [1] A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property.

[2] A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard.

[3] Unlicensed, operable or inoperable antique and special interest vehicles stored by a collector on his property, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

g. ADMINISTRTION DELEGATED TO CHIEF OF POLICE OF HALE CENTER:

The procedure required by this ordinance shall be administered by the Chief of Police of the Police Depatment of Hale Center who is a regularly salaried, full time, employee of the City of Hale Center, Texas, and provided further that removal of vehicles or parts thereof from property may be made by the Chief of Police or any other person duly authorized by him.

Section 11: DISPOSAL OF JUNKED VEHICLES: Junked vehicles or parts thereof may be disposed of by removal to a scrapyard, demolisher, or any suitable site operated by the City of Hale Center for processing as scrap or salvage, which process shall be consistent with Section 10, Subdivision c. of this Ordinance. The City of Hale Center may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or the City of Hale Center may transfer such vehicle or parts to another, provided such disposal shall be only as scrap or salvage, consistent with Section 10, Subdivision c. of this Ordinance.

Section 12: AUTHORITY TO ENFORCE:

Any person authorized by the City of Hale Center, Texas, to administer the provisions of the procedures authorized by this ordinance may enter upon private property for the purposes specified in the procedures to examine vehicles or parts thereof, obtain information as to the identity of vehicles and to remove or cause the removal of a vehicle or parts

thereof declared to be a nuisance pursuant to the procedures. The Municipal Court of the City of Hale Center, Texas, shall have authority to issue all orders necessary to enforce such procedures.

Section 13: EFFECT OF THIS ORDINANCE ON OTHER ORDINANCES AND STATUTES:

Nothing in this Ordinance shall affect ordinances and statutes that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

Section 14: No other ordinance or parts of an ordinance in conflict with this ordinance shall in any wise control or weaken the provisions of this ordinance, but shall be subservient hereto.

Section 15: If any article, paragraph, sub-division, clause, phrase, or provision of this ordinance shall be adjudged invalid, or to be held unconstitutional, the same shall not affect the validity of the ordinance as a whole or any part of provision hereof other than the part so decided to be invalid or held to be unconstitutional.

Section 16: EFFECTIVE DATE OF THIS ORDINANCE:

This ordinance shall take effect from and after its passage on November 4, 1974.

Section 17: EMERGENCY CLAUSE:

The presence of abandoned and junked motor vehicles in the City of Hale Center creating nuisances creates an

emergency and an imperative public necessity and the City Council having declared such emergency and imperative public necessity to exist, hereby declares this ordinance passed finally and declares that it take effect and be in full force and effect from and after its passage this December 2, 1974.

Passed and approved this 2nd day of December, 1974.

CITY OF HALE CENTER

By /s/ L. B. Dyer

L. B. Dyer, Mayor

Attest:

/s/ M. Bourland

M. Bourland, City Secretary

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS
In Corporation Court, City of Hale Center,
Hale County, Texas
County of Hale COMPLAINT
No. 1972

Before me the undersigned authority on this day personally appeared Genaro Garcia, Jr. who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence A. Pringle on or about the 10th day of October, A.D. 1979 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully failed [sic] to comply with city ordinances #220 & #291 pertaining to a public nuiance [sic] and junked vehicles tr [sic] respectively, on his property which lies within thecity [sic] limits of Hale center [sic], Texas and allowingsuch [sic] public nuisance and junked vehicles to remain on his property, to wit: junk, inoperative vehicles, trash, weeds, rubbish, junked vehicles, all of which is objectionable, unsightly, insanitary, dangerous to the public health and constitues [sic] a fire hazard and a hazard to the public health and welfare of the city of Hale Center, Texas. Such also creates an attractive nuisance and is determental [sic] to the economic welfare of the City of Hale Center, and the State of Texas, as an urban blight, said property and junked vehicles, rubbish, trash, & weeds, being clearly visible from a public place or a public right of way. Clarence A.

Pringle has fail [sic] to comply with either ofthese [sic] ordinances, by removeing [sic] such objectionable items from his property and/or placing a fence which removes such junked vehicles from the view of the public from a public right of way, contrary to the ordinances of the City of Hale Center and contrary to the statutes on such cases made and provided, and against the peace and dignity of the State. /s/ provided, and against the peace and dignity of the State. /s/ Genaro Garcia, Jr.

Sworn to and subscribed before me, on this, the 11 day of October, A.D., 1979.

/s/ Mark W. Laney

Judge or Mayor, Corporation Court, City of Hale Center, Hale County, Texas

FILED
On 30 day of
Nov. A.D. 1979
MILDRED TUCKER
County Clerk, Hale County,
Texas
By /s/ Juanita Black

Deputy

8231

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS

In Corporation Court, City of Hale Center,
Hale County, Texas

County of Hale COMPLAINT
No. 1975

Before me the undersigned authority on this day personally appeared Victor J. Martinez who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence A. Pringle on or about the 21st day of October, A.D. 1979 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully failed to comply with city ordinances #220 & #291 pertaining to a public nuiance [sic] and junked vehicles tr [sic] respectively, on his property which lies within thecity [sic] limits of Hale center [sic], Texas and allowingsuch [sic] public nuisance and junked vehicles to remain on his property, to wit: junk, inoperative vehicles, trash, weeds, rubbish, junked vehicles, all of which is objectionable, unsightly, insanitary, dangerous to the public health and constitues [sic] a fire hazard and a hazard to the public health and welfare of the city of Hale Center, Texas. Such also creates an attractive nuisance and is determental [sic] to the economic welfare of the City of Hale Center, and the State of Texas, as an urban blight, said property and junked vehicles, rubbish, trash, & weeds, being clearly visible from a public place or a public right of way. Clarence A. Pringle has fail [sic] to comply with either ofthese [sic]

ordinances, by removeing [sic] such objectionable items from his property and/or placing a fence which removes such junked vehicles from the view of the public from a public right of way, contrary to the ordinances of the City of Hale Center and contrary to the statutes on such cases made and provided, and against the peace and dignity of the State. /s/ Victor J. Martinez.

Sworn to and subscribed before me, on this, the 22nd day of October, A.D., 1979.

/s/ Mark W. Laney

Judge or Mayor, Corporation Court, City of Hale Center, Hale County, Texas

FILED
On 30 day of
Nov. A.D. 1979
MILDRED TUCKER
County Clerk, Hale County,
Texas
By /s/ Juanita Black

Deputy

8232

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS

In Corporation Court, City of Hale Center,
Hale County, Texas

County of Hale COMPLAINT
No. 1976

Before me the undersigned authority on this day personally appeared Genaro Garcia, Jr. who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence A. Pringle on or about the 25th day of October, A.D. 1979 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully failed to comply with city ordinances #220 & #291 pertaining to a public nuiance [sic] and junked vehicles tr [sic] respectively, on his property which lies within thecity [sic] limits of Hale center [sic], Texas and allowingsuch [sic] public nuisance and junked vehicles to remain on his property, to wit: junk, inoperative vehicles, trash, weeds, rubbish, junked vehicles, all of which is objectionable, unsightly, insanitary, dangerous to the public health and constitues [sic] a fire hazard and a hazard to the public health and welfare of the city of Hale Center, Texas. Such also creates an attractive nuisance and is determental [sic] to the economic welfare of the City of Hale Center, and the State of Texas, as an urban blight, said property and junked vehicles, rubbish, trash, & weeds, being clearly visible from a public place or a public right of way. Clarence A. Pringle has fail [sic] to comply with either ofthese [sic] ordinances, by removeing [sic] such obhectionable items from his

property and/or placing a fence which removes such junked vehicles from the view of the public from a public right of way, contrary to the ordinances of the City of Hale Center and contrary to the statutes on such cases made and provided, and against the peace and dignity of the State.
/s/ Genaro Garcia, Jr.

Sworn to and subscribed before me, on this, the 26th day of October, A.D., 1979.

/s/ Mark W. Laney

Judge or Mayor, Corporation Court, City of Hale Center, Hale County, Texas

FILED
On 30 day of
Nov. A.D. 1979
MILDRED TUCKER
County Clerk, Hale County,
Texas
By /s/ Juanita Black

Deputy

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS
In Corporation Court, City of Hale Center,
Hale County, Texas
County of Hale COMPLAINT
No. 2012

Before me the undersigned authority of this day personally appeared Richard Cordell who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence Pringle on or about the 11th day of March, A.D. 1980 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully violated [sic] ordinance [sic] #220 in that he did then and there willfully allow rubbish, trash and other unsightly, objectional [sic] and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence Pringle specifically Block 13, lots 3, 4 and 5 of Hale Center, Texas, contrary to the Ordinances of the said Municipal City, as authorized and approved on the 8th day of January, 1968, and against the peace and dignity of the state.
/s/ Richard Cordell

Sworn to and subscribed before me, on this, the 11th day of March, A.D., 1980.

/s/ Mark W. Laney

Judge or Mayor, Corporation
Court, City of Hale Center,
Hale County, Texas

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS
In Corporation Court, City of Hale Center,
Hale County, Texas
County of Hale COMPLAINT
No. 2012

Before me the undersigned authority of this day personally appeared Richard Cordell who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence Pringle on or about the 11th day of March, A.D. 1980 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully maintain a public nuisance on lots owned and occupied by the said Clarence Pringle, to with: Block 13, Lots 3, 4 & 5, said public nuisance being in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other various items of scrap metal, said items being detrimental to the safety and welfare of the General Public, tending to reduce the value of adjacent private property, safety of citizens of Hale Center, Texas and producing an urban blight adverse to the development of Hale Center, Texas, in violation of Ordinance #291 of the Municipal City of Hale Center, Texas as authorized the 2nd day of December, 1974, and against the peace and dignity of the State.
/s/ Richard Cordell

Sworn to and subscribed before me, on this, the 11th day of March, A.D., 1980.

/s/ Mark W. Laney

Judge or Mayor, Corporation
Court, City of Hale Center,
Hale County, Texas

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS
In Corporation Court, City of Hale Center,
Hale County, Texas
County of Hale COMPLAINT
No. 2016

Before me the undersigned authority of this day personally appeared Richard Cordell who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence Pringle on or about the 12th day of March, A.D. 1980 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully violated [sic] ordinance [sic] #220 in that he did then and there willfully allow rubbish, trash and other unsightly, objectional [sic] and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence Pringle specifically Block 13, lots 3, 4 and 5 of Hale Center, Texas, contrary to the Ordinances of the said Municipal City, as authorized and approved on the 8th day of January, 1968, and against the peace and dignity of the state.
/s/ Richard Cordell

Sworn to and subscribed before me, on this, the 11th day of March, A.D., 1980.

/s/ Mark W. Laney

Judge or Mayor, Corporation
Court, City of Hale Center,
Hale County, Texas

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS
In Corporation Court, City of Hale Center,
Hale County, Texas
County of Hale COMPLAINT
No. 2014

Before me the undersigned authority of this day personally appeared Richard Cordell who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence Pringle on or about the 12th day of March, A.D. 1980 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully maintain a public nuisance on lots owned and occupied by the said Clarence Pringle, to with: Block 13, Lots 3, 4 & 5, said public nuisance being in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other various items of scrap metal, said items being detrimental to the safety and welfare of the General Public, tending to reduce the value of adjacent private property, safety of citizens of Hale Center, Texas and producing an urban blight adverse to the development of Hale Center, Texas, in violation of Ordinance #291 of the Municipal City of Hale Center, Texas as authorized the 2nd day of December, 1974, and against the peace and dignity of the State.
/s/ Richard Cordell

Sworn to and subscribed before me, on this, the 12th day of March, A.D., 1980.

/s/ Mark W. Laney

Judge or Mayor, Corporation
Court, City of Hale Center,
Hale County, Texas

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS
In Corporation Court, City of Hale Center,
Hale County, Texas
County of Hale COMPLAINT
No. 2019

Before me the undersigned authority of this day personally appeared Richard Cordell who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence Pringle on or about the 13th day of March, A.D. 1980 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully violated [sic] ordinance [sic] #220 in that he did then and there willfully allow rubbish, trash and other unsightly, objectional [sic] and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence Pringle specifically Block 13, lots 3, 4 and 5 of Hale Center, Texas, contrary to the Ordinances of the said Municipal City, as authorized and approved on the 8th day of January, 1968, and against the peace and dignity of the state.
/s/ Richard Cordell

Sworn to and subscribed before me, on this, the 13th day of March, A.D., 1980.

/s/ Mark W. Laney

Judge or Mayor, Corporation
Court, City of Hale Center,
Hale County, Texas

In The Name and By Authority of The State of Texas

THE STATE OF TEXAS
In Corporation Court, City of Hale Center,
Hale County, Texas
County of Hale COMPLAINT
No. 2019

Before me the undersigned authority of this day personally appeared Richard Cordell who, having been by me duly sworn, upon oath, that he has reason to believe and does believe and charge that Clarence Pringle on or about the 13th day of March, A.D. 1980 and before the making and filing of this complaint, in the County of Hale, and State aforesaid, did then and there unlawfully and willfully maintain a public nuisance on lots owned and occupied by the said Clarence Pringle, to with: Block 13, Lots 3, 4 & 5, said public nuisance being in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other various items of scrap metal, said items being detrimental to the safety and welfare of the General Public, tending to reduce the value of adjacent private property, safety of citizens of Hale Center, Texas and producing an urban blight adverse to the development of Hale Center, Texas, in violation of Ordinance #291 of the Municipal City of Hale Center, Texas as authorized the 2nd day of December, 1974, and against the peace and dignity of the State.
/s/ Richard Cordell

Sworn to and subscribed before me, on this, the 13th day of March, A.D., 1980.

/s/ Mark W. Laney

Judge or Mayor, Corporation
Court, City of Hale Center,
Hale County, Texas

## APPENDIX C

## NO. 8230-220-291

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

### JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and

Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8231-220-291**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

## JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and

approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8232-220-291**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

## JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and

approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8612-220**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary

to the ordinance of said Municipal City, as authorized and approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8613-291**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and

approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8615-220**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and

approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8617-291**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and

approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8618-220**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | COUNTY COURT OF |
| VS. | § | HALE COUNTY, |
| CLARENCE A. PRINGLE | § | TEXAS |

## JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and

approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

**NO. 8619-291**

THE STATE OF TEXAS § COUNTY COURT OF
VS. § HALE COUNTY,
CLARENCE A. PRINGLE § TEXAS

## JUDGEMENT AND ORDER

BE IT REMEMBERED that on the 12th day of June, 1980, came on to be heard the above entitled and numbered causes of action; and the State of Texas appeared by its County Attorney of Hale County, and announced ready, and the defendants Clarence A. Pringle and Clarence D. Pringle, appearing both personally and by counsel, The Honorable Ralph Knoohuisen [sic], and announced ready.

WHEREUPON, the Court called the cause for hearing, and a jury having been waived by consent of the parties, the cause was submitted to the court in all things, both of law and of fact, and evidence being submitted upon the merits of the cause, and both sides having made their final remarks, the Court retired to deliberate its verdict.

NOW, THEREFORE, it is the Judgement of this Court, after careful review of all the evidence, that Clarence A. Pringle and Clarence D. Pringle, did unlawfully and willfully allow rubbish, trash and other unsightly, objectionable and unsanitary matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center, Texas owned by the said Clarence A. Pringle and Clarence D. Pringle; specifically Block 1, Lots 7, 8, 9, 10, and 11, and Blocks 13, Lots 3, 4, and 5 of Hale Center, Texas, contrary to the ordinance of said Municipal City, as authorized and

approved by the City of the 8th day of January, 1968, and as identified as Ordinance #220.

FURTHER, it is the judgement of the Court that Clarence A. Pringle, and Clarence D. Pringle have unlawfully and willfully maintained a public nuisance on the property aforesaid, in the form of junked vehicle bodies, scrap iron, empty petroleum drums, and other items of scrap metal, said items being detrimental to the safety and welfare of the general public, tending to reduce the value of adjacent private property, and constituting an attractive nuisance and creating hazard to the health and safety of citizens of Hale Center, Texas, and producing an urban blight adverse to the development of Hale Center, Texas, in violation of the ordinances of the Municipal City of Hale Center, Texas, as authorized and approved by the City the 2nd day of December, 1974, and as identified as Ordinance #291.

IT IS THEREFORE ORDERED, that the said Clarence A. Pringle and Clarence David Pringle personally appear before this Court for sentencing on July 22, 1980, at 10:00 A.M.

/s/ Bill Hollars

PRESIDING JUDGE

Dated this 20 day of June, 1980.

FILED
On 23 day of
June A.D. 1980
MILDRED TUCKER
County Clerk, Hale County, Texas
By /s/ Juanita Blake

Deputy

## APPENDIX D

## NO. 8230

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

ON THIS, the 28th day of July, 1980, the above entitled and numbered cause being again called, the State of Texas appeared by its County Attorney for Hale County, Texas and the defendant Clarence Pringle, who appeared in person and by counsel, the Honorable Ralph Knoohuisen [sic], and waiving time and being in open court for the purpose of having the sentence of the law pronounced against him in accordance with the finding of the Court and the Judgment of the Court heretofore entered, and the defendant being asked by the Court if he had any sufficient reason why the sentence of the Court should not be pronounced against him, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence against him.

IT IS THEREFORE THE ORDER OF THIS COURT that the said defendant Clarence Pringle, who has been adjudged guilty of the misdemeanor offense of (1) allowing a public nuisance to exist upon property belonging [sic] to defendant in violation of Ordinance #291, and (2) allowing an unsightly and unhealthy accumulation of rubbish and trash to accumulate on his property, in violation of

Ordinance #220, said ordinances being duly enacted and enforced by the City of Hale Center, Hale County, Texas.

The defendant Clarence Pringle is hereby sentenced a fine of $100.00 on each violation of Ordinance #220, together with all costs of prosecution and costs of Court. In violations of Ordinance #291, the defendant is hereby ORDERED to cease and desist the maintence [sic] of such conditions as may exist upon ten (10) days from the entry of this order to demonstrate compliance with this order. The State shall also recover all costs of prosecution and costs of court in cases alleging violation of Ordinance #291.

/s/ Bill Hollars

Judge Presiding

**NO. 8231**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

ON THIS, the 28th day of July, 1980, the above entitled and numbered cause being again called, the State of Texas appeared by its County Attorney for Hale County, Texas and the defendant Clarence Pringle, who appeared in person and by counsel, the Honorable Ralph Knoohuisen [sic], and waiving time and being in open court for the purpose of having the sentence of the law pronounced against him in accordance with the finding of the Court and the Judgment of the Court heretofore entered, and the defendant being asked by the Court if he had any sufficient reason why the sentence of the Court should not be pronounced against him, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence against him.

IT IS THEREFORE THE ORDER OF THIS COURT that the said defendant Clarence Pringle, who has been adjudged guilty of the misdemeanor offense of (1) allowing a public nuisance to exist upon property belonging [sic] to defendant in violation of Ordinance #291, and (2) allowing an unsightly and unhealthy accumulation of rubbish and trash to accumulate on his property, in violation of Ordinance #220, said ordinances being duly enacted and enforced by the City of Hale Center, Hale County, Texas.

The defendant Clarence Pringle is hereby sentenced a fine of $100.00 on each violation of Ordinance #220, together with all costs of prosecution and costs of Court. In violations of Ordinance #291, the defendant is hereby ORDERED to cease and desist the mainntence [sic] of such conditions as may exist upon ten (10) days from the entry of this order to demonstrate compliance with this order. The State shall also recover all costs of prosecution and costs of court in cases alleging violation of Ordinance #291.

/s/ Bill Hollars

Judge Presiding

**NO. 8232**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

ON THIS, the 28th day of July, 1980, the above entitled and numbered cause being again called, the State of Texas appeared by its County Attorney for Hale County, Texas and the defendant Clarence Pringle, who appeared in person and by counsel, the Honorable Ralph Knoohuisen [sic], and waiving time and being in open court for the purpose of having the sentence of the law pronounced against him in accordance with the finding of the Court and the Judgment of the Court heretofore entered, and the defendant being asked by the Court if he had any sufficient reason why the sentence of the Court should not be pronounced against him, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence against him.

IT IS THEREFORE THE ORDER OF THIS COURT that the said defendant Clarence Pringle, who has been adjudged guilty of the misdemeanor offense of (1) allowing a public nuisance to exist upon property belonging [sic] to defendant in violation of Ordinance #291, and (2) allowing an unsightly and unhealthy accumulation of rubbish and trash to accumulate on his property, in violation of Ordinance #220, said ordinances being duly enacted and enforced by the City of Hale Center, Hale County, Texas.

The defendant Clarence Pringle is hereby sentenced a fine of $100.00 on each violation of Ordinance #220, together with all costs of prosecution and costs of Court. In violations of Ordinance #291, the defendant is hereby ORDERED to cease and desist the maintence [sic] of such conditions as may exist upon ten (10) days from the entry of this order to demonstrate compliance with this order. The State shall also recover all costs of prosecution and costs of court in cases alleging violation of Ordinance #291.

/s/ Bill Hollars

Judge Presiding

**NO. 8612**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

ON THIS, the 28th day of July, 1980, the above entitled and numbered cause being again called, the State of Texas appeared by its County Attorney for Hale County, Texas and the defendant Clarence Pringle, who appeared in person and by counsel, the Honorable Ralph Knoohuisen [sic], and waiving time and being in open court for the purpose of having the sentence of the law pronounced against him in accordance with the finding of the Court and the Judgment of the Court heretofore entered, and the defendant being asked by the Court if he had any sufficient reason why the sentence of the Court should not be pronounced against him, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence against him.

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/s/ Bill Hollars

Judge Presiding

**NO. 8613**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

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/s/ Bill Hollars

Judge Presiding

**NO. 8615**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

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/s/ Bill Hollars

Judge Presiding

**NO. 8617**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

ON THIS, the 28th day of July, 1980, the above entitled and numbered cause being again called, the State of Texas appeared by its County Attorney for Hale County, Texas and the defendant Clarence Pringle, who appeared in person and by counsel, the Honorable Ralph Knoohuisen [sic], and waiving time and being in open court for the purpose of having the sentence of the law pronounced against him in accordance with the finding of the Court and the Judgment of the Court heretofore entered, and the defendant being asked by the Court if he had any sufficient reason why the sentence of the Court should not be pronounced against him, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence against him.

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/s/ Bill Hollars

Judge Presiding

**NO. 8618**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

ON THIS, the 28th day of July, 1980, the above entitled and numbered cause being again called, the State of Texas appeared by its County Attorney for Hale County, Texas and the defendant Clarence Pringle, who appeared in person and by counsel, the Honorable Ralph Knoohuisen [sic], and waiving time and being in open court for the purpose of having the sentence of the law pronounced against him in accordance with the finding of the Court and the Judgment of the Court heretofore entered, and the defendant being asked by the Court if he had any sufficient reason why the sentence of the Court should not be pronounced against him, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence against him.

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/s/ Bill Hollars

Judge Presiding

**NO. 8619**

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

## SENTENCE

ON THIS, the 28th day of July, 1980, the above entitled and numbered cause being again called, the State of Texas appeared by its County Attorney for Hale County, Texas and the defendant Clarence Pringle, who appeared in person and by counsel, the Honorable Ralph Knoohuisen [sic], and waiving time and being in open court for the purpose of having the sentence of the law pronounced against him in accordance with the finding of the Court and the Judgment of the Court heretofore entered, and the defendant being asked by the Court if he had any sufficient reason why the sentence of the Court should not be pronounced against him, failed to give such reason; whereupon the Court proceeded, in the presence of the said defendant, to pronounce sentence against him.

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/s/ Bill Hollars

Judge Presiding

## APPENDIX E

CAUSE NO. 8230, 8612, 8617
8231, 8613, 8618
8232, 8615, 8619

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

* * *

## MOTION FOR NEW TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW CLARENCE A. PRINGLE, Defendant in the above-styled and -numbered causes, and files this his Motion for a New Trial. In support of said Motion, he would offer the Court the following as points of error:

I.

That the Court erred in allowing the State of Texas to proceed against Defendant in a criminal action in the causes numbered 8230, 8231, and 8232, because of the failure of the State of Texas to comply with the provisions of the Speedy Trial Act.

II.

That the Hale Center city ordinances under which Defendant was tried (Ordinance No. 220 and Ordinance No. 291) each provide for a procedure for giving specific notice by mail to defendants in order to give the defendant an opportunity to correct the alleged wrong before a trial may be held; and that in all the above-styled and -numbered causes no such notice was given to Defendant prior to the trial.

III.

That, as to the trial of Defendant in Cause Nos. 8613, 8617, and 8619, Defendant was tried solely under city Ordinance No. 291, yet Defendant was found guilty under both Ordinance [sic] No. 291 and Ordinance No. 220 in each of these causes, despite the fact that Defendant was not charged with violating Ordinance No. 220; and that this finding Defendant guilty of an offense with which he was not charged amounts to a clear and unconstitutional deprivation of due process.

IV.

That, as to the trial of Defendant in Cause Nos. 8612, 8615, and 8616, Defendant was tried solely under city Ordinance No. 220; yet Defendant was found guilty under both Ordinance No. 220 and Ordinance No. 291, despite the fact that Defendant was not charged with violating Ordinance No. 220; and that this finding Defendant guilty of an offense with which he was not charged amounts to a clear and unconstitutional deprivation of due process.

V.

That in any event the language of Hale Center City Ordinance No. 291 provides only for notice and for certain steps the City may take following said notice and has no provision for finding a person guilty at trial under the ordinance; and that for this reason all convictions of Defendant under Ordinance No. 291 amount to a clear and unconstitutional deprivation of due process.

VI.

That the language of Hale Center city Ordinance No. 220 and Ordinance No. 291 is so vague that it is not possible for a potential defendant to know in advance what conduct is proscribed and what conduct is not proscribed; that the United States Constitution and the Constitution of the State of Texas, as interpreted by the courts, both provided that laws such as Ordinance No. 220 and Ordinance No. 291 are so vague as to be void; and that any conviction of Defendant under either ordinance amounts to a clear and unconstitutional deprivation of due process.

VII.

That the verdict in each of the nine causes in which Defendant was found guilty is manifestly against the weight of the law and the evidence.

**PRAYER**

WHEREFORE, Defendant prays that a new trial be granted in each of the above-styled and -numbered causes, for the reason that the above-described points of error compel that such a new trial be granted.

Respectfully submitted,

/s/ Ralph Knoohuizen

RALPH KNOOHUIZEN
Attorney for Defendant

WEST TEXAS LEGAL SERVICES
1415 West 5th Street
Plainview, Texas 79072
(806) 293-8491

**CERTIFICATE OF SERVICE**

I certify that on this day a true and correct copy of the above and foregoing Motion for New Trial has been served by mailing same certified mail return receipt requested upon

Ron Felty, County Attorney, Hale County Courthouse, Plainview, Texas.

SIGNED this the 5th day of September, 1980.

/s/ Ralph Knoohuizen

RALPH KNOOHUIZEN

FILED
On the 5th day of
Sept. A.D. 1980
/s/Mildred Tucker

County Clerk, Hale County, Texas

By _____
Deputy

## APPENDIX F

CAUSE NO. 8230, 8231, 8232,
8612, 8613, 8615,
8617, 8618, 8619

| | | |
|---|---|---|
| THE STATE OF TEXAS | § | IN THE COUNTY |
| VS. | § | COURT OF HALE |
| CLARENCE A. PRINGLE | § | COUNTY, TEXAS |

* * *

## NOTICE OF APPEAL

COMES NOW CLARENCE A. PRINGLE, Defendant in the above-styled and -numbered cause, and files this his Notice of Appeal of the judgment and accompanying sentence handed down on July 28, 1980. Motion for a new trial was timely filed on September 5, 1980 and was overruled by operation of law on September 25, 1980.

Respectfully submitted,

WEST TEXAS LEGAL
SERVICES
1415 West 5th Street
Plainview, Texas 79072
(806) 293-8491

/s/ Ralph Knoohuizen

RALPH KNOOHUIZEN
Attorney for Defendant

## CERTIFICATE OF SERVICE

On this day I certify that a true and correct copy of the above and foregoing Notice of Appeal has been served upon the State of Texas by mailing same certified mail return receipt requested to the attorney of record for the State of Texas, Ron Felty, County Attorney, Hale County Courthouse, Plainview, Texas, 79072.

DATED this the 25th day of September, 1980.

/s/ Ralph Knoohuizen

RALPH KNOOHUIZEN

## APPENDIX G

Mr. Cordell - Cross by Mr. Knoohuizen

Q. Okay. Now let me ask you about these ordinances. Let's talk about 291 first. Are you familiar with Ordinance 291?

A. Yes, sir.

Q. You have written tickets under that ordinance?

A. That's right.

Q. All right. Now, Section 10 says, "The Police Department of Hale Center shall give ten days notice to the owner or the occupant of the private premises whereupon such public nuisance exists" - what we are talking about in this particular ordinance is junked automobiles, okay? - "stating the nature of the public nuisance on private property and" - that would be, in essence, telling them, you know, "you have a junked automobile." - "that it must be removed and abated within ten days and, further, that a request for a hearing must be made before expiration of said ten day period, . . . ."

So, in essence, would you agree that what that ordinance does is give somebody — they're supposed to give notice; they're supposed to be told that they have ten days in which to take care of the problem; and that, also, during that ten day period, if they want to, they can request a hearing? Would that be a fair reading of that, do you think?

A. Yes, sir.

Q. Okay. And then doesn't it say that "such notice is to be mailed by certified or registered mail with a five day return requested."?

A. That is correct.

Q. Now, was this ever done on any of the tickets that you issued to Clarence Pringle either last October or in March?

A. No, sir.

Q. Okay. So, that residence — that notice requirement was not followed as to Ordinance No. 291, is that correct?

A. That is correct.

Q. Now, in Ordinance No. 220 the language is a little less clear, but it's talking about in Section 5 — first of all, are you familiar with Ordinance No. 220?

A. I have read it.

Q. You have read it. This is another ordinance under which you have issued tickets?

A. That is correct.

Q. All right. Now, Section 5 talks about stagnant water, talks about carrion, filth, or other impure or unwholesome matter. Now, this says — its says, "within ten days after notice of said owner to do so", - and what that means is to give him an opportunity, again like the other ordinance, to clean up what the problem is - it mentions that the notice is to be "in writing, or by letter addressed to such owner at his post office address" and then goes on, you know, if you can't do that, and gives provisions for notice through the newspaper.

And in Section 6 is a similar provision which deals with weeds, rubbish, and brush, but I think that the requirement is the same. In both cases I read this that he is to be given ten days notice to clean it up himself and, if he doesn't, the City will do it for him.

Is that the way you understand this ordinance to read?

A. I believe so.

Q. Now, was he given ten days notice at the time these tickets were issued under Ordinance No. 220? Was he

told, "You have ten days to clean this up, and if you don't, the City will."?

A. He was given that opportunity.

Q. Was he notified of that in writing?

A. No, sir. It was verbal notification.

Q. Who gave him this verbal notification?

A. I did.

Q. You said specifically ten days?

A. Well, no, sir. Longer than that.

Q. When did you say something to him and what did you say?

A. Okay. Prior to the October citations I had visited with Mr. Pringle a number of times to get him to clean up the lots in question, and we had visited — I did advise Mr. Pringle that he had — that he had the opportunity to clean it up, that we both had the same goals, that was to get the lots cleared off and to sell his junk, I wanted to get the lots cleared off where they would be healthy and would be sightly, and his advantage of selling the material, and, so, we both had the same goals in mind. In visited with Mr. Pringle on any number of occasions. Specific times, specific dates, I don't have any, but I did visit with Mr. Pringle to that ends.

Q. So, you have visited with him in the past and, you mentioned, some times before those citations were delivered in October, is that correct?

A. Yes, sir.

Q. But as far as actual, specific notice in writing at the time of the October citations or the March citations, you didn't do that?

A. No, sir. The only written citations were the — written notice were the citations.

Q. And they didn't say anything about having ten days to —

A. That's correct.

Q. — clear this stuff up? Okay.

# APPENDIX H

## TEXAS CODE OF CRIMINAL PROCEDURE

### Article 4.03. Court of Criminal Appeals

The Court of Criminal Appeals shall have appellate jurisdiction coextensive with the limits of the State in all criminal cases. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed by the county court, the county criminal court or county court at law shall not exceed one hundred dollars.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

# APPENDIX I

## TEXAS CODE OF CRIMINAL PROCEDURE

### Article 45.10. Appeal

Appeals from a corporation court shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

80-851

Office-Supreme C
FILE
MAR 19
ALEXANDER L.
CLERK

NO. 80-651

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

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CLARENCE A. PRINGLE,
*Appellant*

V.

THE STATE OF TEXAS,
*Appellee*

---

On Appeal From The County Court of
Hale County, Texas

---

# APPELLEE'S MOTION TO DISMISS OR AFFIRM

---

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant
Attorney General

RICHARD E. GRAY, III
Executive Assistant
Attorney General

W. BARTON BOLING
Assistant Attorney General
Chief, Enforcement Division

DOUGLAS M. BECKER
Attorney General

P. O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3281

*Attorneys for Defendant*

## QUESTIONS PRESENTED

1. Whether the Hale Center municipal ordinances challenged herein are unconsitutionally vague?

2. Whether Appellant was impermissibly sentenced?

3. Whether Appellant was subjected to double jeopardy?

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NO. 80-651

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

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CLARENCE A. PRINGLE,
*Appellant*

V.

THE STATE OF TEXAS,
*Appellee*

---

On Appeal From The County Court of
Hale County, Texas

---

# APPELLEE'S MOTION TO DISMISS OR AFFIRM

---

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgments of the County Court of Hale County, Texas.

## OPINIONS BELOW

There is no written opinion of the County Court of Hale County, Texas, in this case. Appellant has set

forth the judgments and sentences under which he was convicted and punished as Appendices C and D, respectively, to his jurisdictional statement.

## JURISDICTION

The Court has jurisdiction over the cause. The judgments and sentences appealed were entered on June 20, 1980 (Petitioner's Appendix C), and July 28, 1980 (Petitioner's Exhibit D), respectively. Appellant submitted and was granted a motion for leave to file a motion for new trial under Tex. Code Crim. Proc. Ann. art. 40.05. As a result, the timely filed motion for new trial, which raised the issues Appellant raises herein, was considered and overruled by operation of law on September 25, 1980. Notice of appeal was timely filed the same day. The jurisdictional statement was filed and the appeal docketed in this Court on November 24, 1980, within ninety days after final judgment as evidenced by the denial of the timely filed motion for new trial. *See*, 28 U.S.C. §2101(d). Sup.Ct. R. 12, 13.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED

Appellant cites and sets forth Ordinances Nos. 220, 291, of the Municipal Code of Hale Center, Texas. He also relies upon the due proess clause of U.S. Const. amends. V, XIV. Also involved is Tex. Rev. Civ. Stat. Ann. art. 6687-9, the Texas Abandoned Motor Vehicle Act, which provides in pertinent part as follows:

> Sec. 9. Junked vehicles which are located in any place where they are visible from a public place or public right-of-way are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard

to the health and safety of minors, and are detrimental to the economic welfare of the State, by producing urban blight which is adverse to the maintenance and continuing development of the municipalities in the State of Texas and such vehicles are therefore, declared to be a public nuisance.

Sec. 10. Any city, town, or county within this State may adopt procedures for the abatement and removal of junked vehicles or parts thereof, as public nuisances, from private property, public property or public rights-of-way; provided, however, that any such procedures shall contain: [those provisions contained in Hale Center Municipal Ordinance No. 291]

* * *

...(h)...If a person is found guilty of maintaining a public nuisance as defined in Section 9 of this Act, the person shall be punished by a fine not to exceed two hundred dollars ($200) and the court shall order removal and abatement of the nuisance.

## STATEMENT OF THE CASE

Because the complaints against Appellant contained in Appendix B to his jurisdictional statement are obviously mispaginated and misnumbered, Appellee cannot determine with certainty whether Appellant's characterizations of those complaints are accurate. Other allegations in Appellant's Statement of the Case are correct.

## MOTION TO DISMISS

Pursuant to S.Ct. R. 16.1(b), the appeal should be dismissed because it fails to present a substantial federal question. Appellant complains that the language prohibiting "unsightly" and "objectionable" conditions contained in Ordinance No. 220 is unconstitutionally vague, but he was not found guilty for conduct constituting a violation only of those allegedly vague provisions. He was found guilty because of violations of those provisions *and* for another prohibiting "unsanitary" conditions. His convictions, therefore, rest independently upon uncontested criminal liability. They would remain valid even if this Court agreed with Appellant that the challenged provisions of the ordinance are invalid.

Appellant further complains that he was convicted for violation of Ordinance No. 291, which contains no provision for criminal penalties and with which he was not charged. Neither contention is true, as discussed below. Even if they were true, these are matters to be corrected by way of habeas corpus, either state or federal, and unworthy of this Court's attention. It is well-settled that a person cannot be found guilty of an offense with which he has not been charged. It is also well-settled that a criminal statute must give fair notice of the penalties that will be imposed against those who violate its terms. Appellant suggests no reason, and Appellee knows of none, why the Court should either reconsider or reaffirm these time-worn axioms of the criminal law. Appellant has other adequate remedies to redress such wrongs.

Appellant's double jeopardy claim is also plainly insubstantial, having been adversely and dispositively addressed only recently in *Brown v. Ohio*, 431 U.S. 161, 169 n. 8 (1977). There is no reason for the Court to write again on that which has so recently been decided.

The questions presented are insubstantial for another reason suggesting dismissal of the appeal under S.Ct. R. 16.1(a). Despite the existence of Tex. Rev. Civ. Stats. Ann. art. 6687-9, authorizing local governmental entities to enact such ordinances as No. 291, there is no allegation or showing that such ordinances are widespread even in Texas, much less elsewhere. The statutes plainly appear to be a valid exercise of municipal police power. The questions raised by Appellant are non-existent, answered upon the face of the ordinances, or amendable to relief elsewhere. The appeal should be dismissed for want of any question justifying the Court's attention.

## MOTION TO AFFIRM

Pursuant to S.Ct. R. 16.1(d), the judgments should be affirmed because Appellant's complaints are without merit. First, the challenged ordinances are not vague. Outside the area of protected speech activities, this Court has limited attacks on vagueness grounds, requiring an examination "in the light of the facts of the case at hand." *United States v. Mazurie*, 419 U.S. 544, 550 (1975). In another case, the Court has stated, "While doubts as to the applicability of the language in marginal fact situations may be conceived, we think that the statute gave [the defendant]adequate warning that her act] was a criminal offense." *United States v. Powell*, 423 U.S. 87, 93 (1975).

In this case, Appellant was convicted for conduct which clearly falls within areas proscribed. Ordinance No. 220 prohibits allowing "rubbish, brush or any other unsightly, objectionable or unsanitary matter" to accumulate on any lot within the corporate limits of Hale Center. Whatever other things it might in some future case conceivably be construed to reach, this ordinance clearly prohibits that for which Appellant was convicted: "unlawfully and willingly allow[ing] rubbish,

trash and other unsightly, objectionable *and unsanitary* matter, specifically, junked vehicle bodies, scrap iron, empty petroleum drums and other items of scrap metal to accumulate on lots in the City of Hale Center..." (emphasis added).

Appellant complains that the terms "unsightly" and "objectionable" are vague. Whatever the merits of theat debate, the question is not properly raised in this case because Appellant's conviction rests upon an allegation and finding that he has maintained *unsanitary* conditions. Appellant does not and could not successfully contend that the state has no right to prohibit such conditions or that men of ordinary understanding cannot fathom the meaning of the prohibiting language. Ordinance No. 220 is constitutional. *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Colten v. Kentucky*, 407 U.S. 104 (1972).

Ordinance No. 291 is even more specific in its terms. Section 9 (Appendix A-2 of Appellant's jurisdictional statement) specifically declares junked vehicles as defined, to be a public nuisance. Appellant's assertion that he had no notice that such junked vehicles were prohibited is clearly without merit.

There is no merit to Appellant's argument that he was deprived of his right to earn a livelihood under *Greene v. McElroy*, 360 U.S. 474 (1959), and *Schware v. Board of Law Examiners*, 352 U.S. 232 (1957), by the operation of these ordinances. Ordinance No. 291 specifically provides:

Excepted from the provisions of this Ordinance are the following ... [2] A vehicle or part thereof which is stored or parked in a lawful manner on the property in connection with the business of a licensed vehicle dealer or junkyard.

Ordinance No. 291, Section 10(f)(2).

Hence, Appellant, if he operates a bona fide junkyard as he asserts, cannot be deprived of his livelihood by violation of Ordinance No. 291. If he is, then obviously he has a substantive defense under the statute. Deprivation of this defense might well provide a ground for habeas corpus relief or conceivably even a suit for damages under 42 U.S.C. §1983, but it provides no basis whatsoever for holding the ordinance unconstitutional. As to Ordinance No. 220, not even a keeper of a junkyard has the right to maintain unsanitary conditions, the circumstance for which Appellant has suffered criminal penalties, so he cannot complain of the operation of that ordinance.

Next, Appellant's complaints about the manner in which he was charged and sentenced are insubstantial and meritless. The specific language common to the sentences giving rise to his complaints is as follows:

> The defendant Clarence Pringle is hereby sentenced [to] a fine of $100.00 on each violation of Ordinance No. 220, together with all costs of prosecution and costs of Court. In violations of Ordinance No. 291, the defendant is hereby ORDERED to cease and desist the maintence [sic] of such conditions as may exist upon ten (10) days from the entry of this order to demonstrate compliance with this order. The State shall also recover all costs of prosecution and costs of court in cases alleging violation of Ordinance No. 291. (Appendix D to Appellant's jurisdictional statement.).

Appellant says that not all the complaints against him charge him with a violation of both ordinances. This averment is untrue. Although some of the complaints may not cite specifically the *number* of both ordinances,

none fails to allege the conduct proscribed by those ordinances. It is the allegation of proscribed conduct that is required by the due process clause, not a specific reference to any particular ordinance or statute. In fact, a statutory reference lacking allegations of specific conduct would itself be infirm.

In any event, Appellant was not imposed criminal sanctions for violation of Ordinance No. 291, but only Ordinance No. 220. Appellant erroneously urges that no criminal penalties are authorized for violation of No. 291. The plain import of the applicable state statute, Tex.Rev. Stats. Ann. art. 6687-9, sec. 10(h), authorizing the ordinance is that although the municipality must pass the enabling legislation set forth in the jurisdictional statement to enact Ordinance No. 291, the penalty provided in the state statute is self-operative upon such municipal enactment.

Thus, Hale Center could have attached criminal penalties to Appellant's acts, but, contrary to Appellant's allegations, it did not. The fine referred to in the sentences is plainly a fine for violation of Ordinance No. 220, which Appellant admits is authorized. No fine, but only a cease and desist order, is provided for in the sentence with respect to Ordinance No. 291. This order is civil, not criminal, in nature, and is plainly authorized by the terms of the ordinance, which states that the Municipal Court of Hale County, Texas, may "issue all orders necessary to enforce such procedures" to cause the removal of a vehicle or parts thereof declared to be a nuisance under the ordinance. Since the county court in the trial de novo on appeal exercises all the powers the municipal court had under the ordinance, such a "cease and desist order" is clearly within the power of the court to issue. The order plainly commands him to remove the conditions--unsanitary junked cars--for which he had just suffered the criminal and civil penalties of which he now complains.

Finally, Appellant's double jeopardy claim is without merit. Unlike *Brown v. Ohio*, 432 U.S. 161 (1977), this case does not involve a prosecutorial decision to divide "a single crime into a series of temporal or spatial units." 432 U.S. at 169. Rather, Ordinance No. 220 itself provides that "each and every day's violation shall constitute a separate and distinct offense." (Appendix A-1 to Appellant's jurisdictional statement). This is the type of case expressly distinguished by the Court in *Brown*, 432 U.S. at 169 n. 8.

Precisely like the statute at issue in *Blockburger v. United States*, 284 U.S. 299 (1932), this ordinance does not prohibit a course of conduct, but provides that each individual act is a violation. Each prosecution requires proof of an additional fact which the others do not, the date of the alleged violation. And it is significant that each additional complaint serves as further notice that the accused *continues* to be in violation of the ordinance. If the rule were otherwise, then a violator could simply pay his fine and continue to violate the ordinance with impunity, claiming that the double jeopardy clause has conferred continuing immunity for his continuous act. This cannot be the law. For this reason, an acquittal or conviction on any one of these charges acts as no bar to prosecution on any of the others.

## CONCLUSION

For the above reasons, Appellee the State of Texas respectfully requests that this appeal be dismissed or affirmed.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant
Attorney General

RICHARD E. GRAY, III
Executive Assistant
Attorney General

W. BARTON BOLING
Assistant Attorney General
Chief, Enforcement Division

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DOUGLAS M. BECKER
Assistant Attorney General

P. O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3281

*Attorneys for Appellee*